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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re L.M.,

a Person Coming Under the Juvenile Court
Law.

B212023

(Los Angeles County
Super. Ct. No. J982826)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Marilyn Mackel, Juvenile Court Commissioner. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Frank J. DaVanzo, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

J.W. (Mother) appeals from the order summarily denying her Welfare and Institutions Code¹ section 388 petition, as well as the order terminating her parental rights over L.M. (Daughter). Mother contends the juvenile court's erroneous decision to deny her section 388 petition without a hearing requires reversal of the order terminating parental rights and remand for a hearing on her section 388 petition. We conclude that the juvenile court properly denied her petition without a hearing and affirm both orders.

BACKGROUND

Mother has a 24-year history of drug abuse. Her drug of choice is cocaine. Before Daughter was born, Mother had six other children who were declared dependents of the juvenile court. Mother failed to reunify with any of her first six children because of her drug problem. Although Daughter was not born with drugs in her system, she had been exposed to drugs while in utero. She was born prematurely at the gestational age of 29 weeks, weighed less than two pounds and required extensive in-hospital care following her birth in October 2006.

According to Mother, she last used drugs on June 8, 2006, the date on which she was arrested for a drug-related offense. Prior to her arrest, Mother was homeless. She lived on the streets and went from shelter to shelter. Mother was released from custody in October 2006, after she gave birth to Daughter. Daughter remained hospitalized. Mother claimed that she was unaware that she was pregnant until one week prior to giving birth. Consequently, she received no prenatal care while pregnant.

On the day Mother was released from custody, the Department of Children and Family Services (DCFS) detained Daughter who remained hospitalized. DCFS thereafter

¹ All further statutory references are to the Welfare and Institutions Code.

filed a dependency petition pursuant to section 300 on behalf of Daughter, alleging that Mother has a history of illicit drug use, including the use of cocaine, and a June 2006 drug-related conviction. It was further alleged that Mother's substance abuse renders her incapable of providing Daughter with regular care and places Daughter at risk.² In addition, Daughter's six siblings were former dependents of the juvenile court and did not reunite with Mother.

DCFS initially recommended no family reunification services for Mother but later changed its recommendation in light of the efforts Mother had undertaken to overcome her addiction and to reunify with Daughter. Shortly after her release, Mother began substance abuse treatment, counseling, parenting and random drug testing. Mother remained in her program from October 2006 through February 2007, after which she enrolled in a different program that allowed her to leave the facility and visit Daughter, who on January 25, 2007 was released from the hospital and placed in foster care.

On January 18, 2007, Mother submitted on the petition, and the juvenile court found the allegations pertaining to Mother to be true. The court declared Daughter a dependent of the court pursuant to section 300, subdivision (b), and ordered Daughter suitably placed. The court directed DCFS to provide Mother with family reunification services and ordered Mother to complete a program of parenting and drug rehabilitation with individual counseling. The court also granted Mother monitored visitation a minimum of three times per week.

With regard to the initial period of supervision, DCFS reported that Mother was in full compliance with her case plan and with court orders. In addition, she had maintained satisfactory visitation with Daughter. Mother wished to remain drug free and to reunify with Daughter. In DCFS's assessment, Mother and Daughter had developed a bond.

² The petition also alleged that Daughter's alleged father, J.M., Sr., had a history of illicit drug use which rendered him incapable of providing Daughter with regular care, endangered Daughter and placed her at risk of harm. J.M., Sr., is not a party to this appeal.

Thus, the termination of family reunification services would have a detrimental impact on the family.

At the six-month review hearing (§ 366.21, subd. (e)) held on June 20, 2007, the juvenile court found that Mother was in compliance with her case plan and that there was a substantial likelihood that Daughter could and would be returned to Mother's care and custody. The court therefore continued Mother's reunification services for an additional six months to December 19, 2007. At the request of Mother's counsel, who stated he was "very proud" of Mother who had made "the biggest turnaround" of any of his clients, the court granted DCFS discretion to liberalize to unmonitored visits.

In August 2007, Mother stopped visiting Daughter. Mother also failed to contact the foster mother or DCFS to check on Daughter's well-being. On November 29, 2007, Mother's whereabouts were unknown.

At the 12-month review hearing held on December 19, 2007, new counsel was appointed to represent Mother, whose whereabouts remained unknown. Counsel requested that the matter be put over for a contest and to give counsel an opportunity to speak with Mother. The court granted counsel's request and continued the matter to February 4, 2008. On that date, Mother failed to appear. The court terminated family reunification services for both parents, finding that "[n]either parent has been in compliance with the case plan" and that DCFS has made reasonable efforts. The court then scheduled a section 366.26 selection and implementation hearing for June 2, 2008.

On May 9, 2008, the juvenile court took the section 366.26 hearing off calendar and rescheduled it to September 4, 2008. The court also ordered a due diligence search for both parents to be conducted. Neither parent could be located.

In an August 2008 status review report, DCFS noted that on June 27, 2008, Daughter was placed in an adoptive home and had adjusted well. The whereabouts of Mother remained unknown.

On August 1, 2008, the court held a review of the permanent plan hearing. The matter was heard by submission with the parties agreeing that Daughter's placement remained appropriate and that adoption was the goal.

At the section 366.26 hearing held on September 4, 2008, Mother remained whereabouts unknown. The matter was continued to November 3, 2008 for a completed due diligence search and service on parents' counsel.

On October 7, 2008, DCFS learned that Mother was in rehab in Acton, California. On October 20, Mother asked to visit with Daughter and stated she wanted her back. A children's social worker advised Mother that she could not have visitation without prior court approval. Mother also made the following statement to the social worker: "I want my daughter back. I miss her and love her. I sent her a doll. I'm sorry that I can't do more. I do feel bad; I was on the verge of getting her back, but I let my emotions get in the way. There were some things regarding [Father] that I found out regarding his health and I was angry, but everything is ok now. But I want my baby back. I am in Acton Rehab now and when they let me out I will be going to Via Vante Women and Children; there I will get skills to be a productive mother."

On November 3, 2008, the court continued the section 366.26 hearing to November 5 for a contest.

On November 5, Mother filed a section 388 petition. Mother asked that the court reinstate family reunification services and take the section 366.26 hearing off calendar or, at the very least, delay the selection and implementation hearing. Mother also asked the court for a visitation schedule. Mother explained that she had been in full compliance with her case plan and been visiting Daughter regularly when she learned she might be HIV positive, after which she relapsed. Mother claimed she "has now been in compliance with her court ordered case plan and has been in a program since 8/25/08." In Mother's view, the changes she requested were justified because of her initial compliance with the case plan, her regular visitation with Daughter and the relationship she had developed with Daughter. Mother claimed that "[a] parent can provide the most permanent plan." Attached to Mother's section 388 petition was a letter from the Los Angeles County Department of Public Health, Antelope Valley Rehabilitation Center confirming that Mother had been admitted into a treatment program on August 25, 2008 and that her tentative date of completion was December 23, 2008, and asking that the

court grant a continuance of any court appearances during the treatment period until Mother completed her program. It was further reported that mother tested negative for all drugs on October 26, 2008.

The juvenile court denied Mother's section 388 petition without a hearing, stating that "the facts do not support what is requested. No new evidence or change of circumstances is shown, nor can the court find that it would be in the best interest of the child to grant or to set the 388 for hearing."

The court then proceeded to conduct the section 366.26 hearing. After a consideration of the evidence before it, as well as the arguments of counsel, the juvenile court terminated Mother's parental rights over Daughter, after which Mother unsuccessfully made a heartfelt plea for another chance.

DISCUSSION

Mother contends the juvenile court abused its discretion when it denied her section 388 petition without affording her a hearing. We disagree.

Pursuant to section 388, "[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a).) The court shall order that a hearing be held on the petition "[i]f it appears that the best interests of the child may be promoted by the proposed change of order." (*Id.*, subd. (d).) A section 388 petition is to be construed liberally in favor of its sufficiency. (*In re D.R.* (2007) 155 Cal.App.4th 480, 487.)

Following its review of a section 388 petition, the juvenile court has two alternatives. It may hold a hearing on the petition, or it may summarily deny it. (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.) To avoid a summary denial, a parent seeking a change of order must make a prima facie showing of facts that would justify the

granting of the petition if the evidence submitted in support of the petition was believed. (*Ibid.*; *In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) More specifically, the petitioner must make a prima facie showing of changed circumstances and that the best interests of the child would be promoted by the proposed modification. (*In re D.R.*, *supra*, 155 Cal.App.4th at p. 487.) If the petition demonstrates that the best interests of the child would be promoted by holding a hearing, the court must order a hearing. (*Lesly G.*, *supra*, at p. 912; *In re Heather P.* (1989) 209 Cal.App.3d 886, 891.) If, however, the petition does not state a change of circumstances or new evidence that might justify modifying an order, the court may deny the petition summarily. (*Lesly G.*, *supra*, at p. 912; *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450.)

The juvenile court's decision to deny a section 388 petition without a hearing will be reviewed for an abuse of discretion. (*In re D.R.*, *supra*, 155 Cal.App.4th at p. 487.) We will uphold a summary denial of the petition as long as the juvenile court did not exceed the bounds of reason. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) If two or more inferences may reasonably be deduced from the facts, we will not substitute our decision for that of the juvenile court. (*Ibid.*)

In her section 388 petition filed on November 5, 2008, Mother asked the court to modify its February 4, 2008 order terminating reunification services. Specifically, Mother asked the court to take the selection and implementation hearing off calendar and to reinstate her family reunification services. As changed circumstances, Mother alleged that she had been in full compliance with her case plan and had been visiting Daughter regularly when Mother learned she might have contracted HIV. At that point, she relapsed and her whereabouts remained unknown for about 14 months. On August 5, 2008, she enrolled anew in a drug program and had since been complying with her case plan. Mother provided proof that she entered treatment in August 2008 and that she tested negative for drugs on October 26, 2008.

The juvenile court denied the petition outright concluding that "the facts do not support what is requested." The court expounded: "No new evidence or change of

circumstances is shown, nor can the court find that it would be in the best interest of the child to grant or to set the 388 for hearing.” The court made the proper ruling.

The court properly denied Mother’s petition without a hearing because she failed to make a prima facie showing of a change of circumstances. Mother has a history of drug abuse more than two decades long, she has been involved with the juvenile dependency system for 13 years, and she has lost her six oldest children because of her drug abuse. While Mother showed great promise from the time Daughter was detained through the first review period—i.e., the first six months of the reunification period—she later suffered a lengthy relapse after learning she may have contracted HIV from Daughter’s father. During the 14 months that followed this revelation, Mother’s whereabouts were unknown and she had no contact with Daughter. That Mother was able to pick herself up after relapsing and to enroll anew in a drug treatment program is commendable, but it does not constitute new evidence or a change of circumstance justifying the reinstitution of family reunification services. The sad truth is that Mother continues to struggle with drug addiction.

Summary denial of the petition was also warranted because Mother failed to make a prima facie showing that the modification she requested was in Daughter’s best interests. Obviously referring to Mother’s compliance during the initial review period, the petition alleged only that “Mother had been in compliance and visiting regularly, and had a relationship with [Daughter]” and that a “parent can provide the most permanent plan.” This is not sufficient.

For all intents and purposes the parent/child bond Mother developed with Daughter during the early months of Daughter’s life was broken when Mother, overwhelmed by the possibility of having a serious disease, walked out of Daughter’s life for 14 months. By the time Mother got back on track and enrolled anew in a drug treatment program, Daughter was two years and two months old and had been placed in an adoptive home where she was loved and well cared for. Under these circumstances, we conclude that the juvenile court acted well within its discretion in summarily denying Mother’s section 388 petition. (*In re D.R.*, *supra*, 155 Cal.App.4th at p. 487.)

DISPOSITION

The order summarily denying Mother's section 388 petition and the order terminating her parental rights over Daughter are affirmed.

NOT TO BE PUBLISHED

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.